UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1991/1
5 June 1991

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Ninth session
22 July - 2 August 1991

Item 4 of the provisional agenda

STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Information received from Governments

CONTENTS

	Paragraphs	Page
INTRODUCTION	1 - 3	2
I. Information submitted by Governments	4 - 27	3
A. Finland	4 - 21	3
B. Mexico	22 - 27	6

INTRODUCTION

1. By its resolution 1982/34 of 7 May 1982, the Economic and Social Council authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish annually a working group on indigenous populations to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually, and to give special attention to the evolution of standards concerning the rights of indigenous populations.

2. The Sub-Commission, in resolution 1990/26, requested the Secretary-General to transmit the report of the Working Group to Governments for specific comments and suggestions aimed at clarification, simplification and generalization of the texts contained in the annexes. The Commission on Human Rights endorsed this request in its resolution 1991/59 of 6 March 1991. In accordance with these resolutions, appropriate communications were sent to Governments on 10 December 1990.

3. The present document contains replies received as of 31 May 1991 from Governments commenting on the first revised text of the draft universal declaration of indigenous rights, as well as the suggestions made by the informal drafting groups. Further replies, if any, will be included in addenda to this document.

I. INFORMATION SUBMITTED BY GOVERNMENTS

A. Finland

1. General observations

4. The draft universal declaration of indigenous rights has been under preparation at the United Nations since 1982. The Ministry of Justice has on different occasions been given the opportunity to make observations on the drafts of the Working Group charged with preparing the declaration (19.3.1988 3148/45/87, 17.2.1989 235/45/89 and 19.3.1990 800/45/90). In the present statement the Ministry refers to the points of view it has presented in the earlier observations without unnecessarily reiterating them.

5. The time limit for submitting a statement has on this occasion been insufficient. The Ministry of Justice has therefore contented itself with expressing general views. The Ministry has, however, found it appropriate to ask for a statement from the Sami delegation on the draft declaration which is attached hereto (see paras. 17-21 below).

6. The only indigenous people, as referred to in the draft declaration, in Finland is the Sami, of whom there are about 5,700 in the country. The preservation of the Sami culture, the strengthening of the Sami language and the improvement of the living conditions of the Sami have been central starting points for government policy on Sami matters in the past. On this basis several separate legislative projects have been carried through during the last year.

7. At the end of 1990 Parliament passed an Act on the Use of the Sami language before Authorities and an Act on the Amendment of the Language Act. When these reforms come into force the Sami language, in addition to the national languages prescribed by the Constitution, i.e. Finnish and Swedish, can be used in courts of law and before other authorities. All authorities in the Sami district and certain national authorities of central significance to the citizens fall within the scope of application of these Acts. Those laws, decrees, decisions of the authorities and legislative proposals that are relevant to Sami interests shall, in line with the new legislation, be published also in the Sami language.

8. The school legislation, too, was revised in 1990 so that teaching can be arranged in the Sami language and the Sami language can be taught at all levels, including upper secondary school. Moreover, Parliament has passed an amendment to the Parliament Act according to which the Sami are to be heard in Parliament on all questions particularly relevant to them. Since this involves a Constitutional amendment, it will come into force only if approved by the new Parliament to be elected in the parliamentary elections of 1991.

9. One question still to be solved is whether it is necessary to confirm the rights of the Sami to those land areas where they traditionally have lived and which they have used for their means of livelihood, and how this should be arranged. The Consultative Committee for Sami Affairs has presented a proposal on the matter and comments on that have been requested.

10. It would be to the advantage of the development of the Sami culture and the Sami if instruments of international law could be referred to in support of the proposed measures. In this respect the declaration under preparation must be considered important. The declaration will strengthen those standards which were already approved in Convention No. 169 on the Rights of Indigenous Peoples, revised by the ILO in 1989. For this reason the Ministry of Justice takes a positive attitude to the work being carried out within the United Nations to bring about a declaration.

11. The Ministry of Justice has taken notice of the fact that organizations representing indigenous peoples have been given an opportunity to participate in the work of the Working Group preparing the declaration. This has enabled the Finnish Sami, too, to influence the realization of their aims through the Nordic Sami Council, which last year was approved as a non-governmental organization. Even though the cooperation between this organization and the representatives of the Nordic Governments has been exemplary at the meetings of the Working Group, the Ministry of Justice does not consider that this arrangement offers the Finnish Sami sufficient possibilities to exercise influence; it suggests that the Sami delegation should be allowed to appoint its own representative to the Finnish Government delegation. Positive experience of such exploitation of Sami expertise has been gained, inter alia, in the preparation of the above-mentioned ILO Convention.

2. Examination of the contents of the draft declaration

12. Most of the articles of the draft declaration pose no problems for Finland. The main part corresponds to those views on which the Finnish minority policy is built. An example is the successful formulation of paragraph 9 as it is phrased in the proposal of Drafting Group III.

13. It can further be mentioned that the draft declaration, both in spirit and in substance, to a large extent observes the principles of other international instruments on minority right under preparation (i.e. the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, which is being prepared by the United Nations, and the draft European convention for the protection of minorities and the draft European charter for regional or minority languages, both of which are under preparation in the Council of Europe). These other instruments have, it is true, a certain very careful way of approaching problems that have proved difficult. It is in this respect that the draft declaration which is now the object of examination most clearly differs from the other documents under discussion. This unprejudiced, ambitious approach may turn out to be problematic in the future work of the Working Group.

14. The differences between the document under discussion and the above-mentioned ILO Convention also deserve mention. In many respects the draft declaration presupposes more from States than the Convention. Given that States seem to be experiencing great difficulties in ratifying the Convention because of the contents of some of the articles, it is easy to foresee that setting stricter obligations with regard to certain problematic questions will lead to insuperable difficulties in the Working Group.

15. Examples of such problematic questions with which difficulties as referred to above may be expected are those concerning the right to land contained in Part II of the draft declaration. Concerning these questions, it might be helpful to consider a more flexible formulation which, while paying sufficient attention to the justified rights of the indigenous peoples, would offer Governments a larger choice when deciding upon measures that would respond to the conditions set out in the declaration.

16. As stated above, it has not been possible for the Ministry of Justice to make a detailed examination of the draft declaration within the set time limit. On the other hand, such scrutiny would seem appropriate only after a definitive text for each paragraph of the draft declaration has been decided by the Working Group.

3. Statement of the Sami delegation

17. The Working Committee of the Sami Delegation, at its meeting on 5 February 1991, discussed questions in connection with the preparation of the United Nations draft universal declaration of indigenous rights and wishes to make the following comments.

18. The life and conditions of indigenous peoples differ in most cases so fundamentally from the life and conditions of the main population that the internal law of the State neither recognizes nor protects the right of the members of the indigenous peoples to their lifestyle, property and identity. This state of affairs is in sharp conflict with both those principles of respect for human rights which most States have approved within the United Nations and with those fundamental rights which in many States are granted to citizens.

19. The delegation finds that the defects in the national treatment of indigenous peoples could be remedied by granting these peoples full human rights and by approving, within the United Nations, international norms for the rights and the legal protection of these peoples, according to which Governments can formulate national policy measures. Since the Working Group on Indigenous Peoples is addressing such questions, the delegation finds its work particularly significant and is willing to assist in advancing it.

20. Due to the limited time, the delegation has not yet been able to study the text of the draft declaration and its resolutions and reports in sufficient detail, nor has it had time to discuss the matters at a plenary of the delegation. The delegation wishes, however, to refer to the positive development which has taken place in the international community as regards indigenous peoples since 1989, when the ILO accepted the Convention on Indigenous Peoples. The same positive development can now be seen in the Nordic countries in general. This is especially the case in Finland, where the Government has lately taken steps, inter alia, to hear the only indigenous people in Finland, the Sami, during the drafting work on the law and to improve the position of the Sami language. The Finnish Parliament has also taken a positive attitude to the issues in question. A draft Act has furthermore been prepared in Finland with the intention of restoring to the Sami certain rights to their land and increasing their autonomy.

21. In the opinion of the delegation, the points of view of the Sami will best be brought out during the preparation of the draft declaration if a representative of the delegation is present in the Working Group as part of the delegation of the Finnish Government. In the light of previous experience, the participation of a Sami representative has been useful to the preparation of an agreement. In view of this, the delegation finds that the delegation of the Finnish Government should appoint a Sami representative as Sweden has already done and Norway has stated it will do before the next meeting.

B. Mexico

22. The Government of Mexico endorses, on the whole, the spirit of the draft universal declaration of indigenous rights; more specifically, it wishes to highlight the following:

(a) The statement contained in part I, article 2 might well be omitted; thus far no international law text has expressly excluded indigenous populations and it is therefore clear that they are included under the Universal Declaration of Human Rights;

(b) In referring to the right to be "protected against genocide", article 3 employs a phrase that is inappropriate and paternalistic in style. Genocide actually refers to a State policy involving the extermination of populations; accordingly, the reference should be to the obligation of States to avoid genocidal actions;

(c) By referring to ethnic and cultural characteristics and distinct identity and by citing only one case of this kind, article 4 appears somewhat restrictive.

23. Nevertheless, each of the ethnic and cultural characteristics and distinct identities which must be "maintained and developed" are set forth in the general framework of part II. It might be asked whether the first part of article 4 is necessary or whether it could in fact be grouped with the other articles in part II. In this connection, the second part of article 4, which reads: "including the right of peoples and individuals to call themselves by their proper names", could be incorporated in article 9.

24. Part III is central to the rights of indigenous populations. In article 12, lands might be separated from resources; furthermore, the time referred to could be specified more precisely in order to avoid confusion with regard to lands that are currently owned by some indigenous populations. In article 14, the meaning of the word "territories" should be clarified.

25. Article 17 should point out that the obligation of States to consult with "indigenous peoples" and with "both domestic and transnational corporations" needs to be delimited in various ways. First, the article should mention that States will consult when an indigenous population is involved, not, as the wording implies, in every case. Secondly, it seems inappropriate to include in a draft of this nature the right of "both domestic and transnational corporations" to be consulted. Lastly, this article uses the expression "indigenous peoples" while the declaration refers to "populations": the concept for which rules will be formulated should be standardized.

26. Part V should be carefully reviewed in the light of the fact that the wording implies a kind of "separation" between indigenous populations and national issues as a whole. Article 23 is a good illustration of suggesting "reservations" for indigenous populations. There are also phrases which seem to indicate that indigenous populations are assumed to be "States within the State", as in article 27, for example, which establishes the "right to claim that States honour treaties and other agreements concluded with indigenous peoples" (again referring to peoples, as does article 29).

27. Finally, article 30 is not comprehensible since it lacks precise meaning.